

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY ANDERSON,

Petitioner,

v.

CASE NO. 05-CV-60285-AA
HONORABLE JOHN CORBETT O'MEARA

THOMAS BIRKETT,

Respondent.

OPINION AND ORDER DISMISSING CASE AS DUPLICATIVE

Gregory Anderson ("Petitioner"), a state prisoner presently confined at Camp Lehman in Grayling, Michigan, has filed a *pro se* petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his convictions for assault with intent to commit great bodily harm and felony firearm which were imposed following a bench trial in the Wayne County Circuit Court. Petitioner was sentenced to consecutive sentences of four to 10 years imprisonment and two years imprisonment on those convictions. In the instant action, Petitioner raises issues concerning the judicial fact-finding, the admission of hearsay evidence, and two claims of prosecutorial misconduct. Petitioner, through counsel, has previously filed a habeas action with this Court challenging the same convictions, which is currently pending before the Honorable Arthur J. Tarnow. *See Anderson v. Curley*, No. 05-CV-74596. Accordingly, the instant action must be dismissed as duplicative.

A suit is duplicative, and subject to dismissal, if the claims, parties, and available relief do not significantly differ between the two actions. *See, e.g., Barapind v. Reno*, 72 F. Supp. 2d 1132, 1145 (E.D. Cal. 1999). Petitioner's current habeas petition is duplicative of his pending petition because the claims are identical and seek the same relief. *Id.* Because Petitioner challenges the same convictions in both petitions and raises the same claims, the Court will dismiss this second petition as duplicative. *See Harrington v. Stegall*, 2002 WL 373113, *2 (E.D. Mich. Feb. 28, 2002); *Colon v. Smith*, 2000 WL 760711, *1, n. 1 (E.D. Mich. May 8, 2000); *see also Davis v. United States Parole Comm'n*, 870 F.2d 657, 1989 WL 25837, *1 (6th Cir. March 7, 1989) (district court may dismiss habeas petition as duplicative of pending habeas petition when the second petition is essentially the same as the first petition).

Accordingly, the Court **DISMISSES** the instant habeas petition as duplicative. This dismissal is without prejudice to the habeas petition filed as Case No. 05-74596.

IT IS SO ORDERED.

s/John Corbett O'Meara
John Corbett O'Meara
United States District Judge

Dated: January 9, 2006